

EMPLOYER STATUS DETERMINATION
PYCO Industries

This is the determination of the Railroad Retirement Board concerning the status of PYCO Industries (PYCO) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA).

PYCO is a processor and shipper of cottonseed oil and related products, owned by member cotton gins with oil mills in Lubbock, Texas and Greenwood, Mississippi. PYCO was the largest shipper on the Lubbock lines of South Plains Switching, Ltd. (SAW)¹, with two plants located on those lines. According to information submitted by Attorney Charles H. Montange in a letter dated November 8, 2007, because SAW was providing inadequate rail service, PYCO applied to the Surface Transportation Board (STB) pursuant to 49 C.F.R. Part 1146 for an authorization for West Texas & Lubbock Railroad (WTL)² to provide PYCO with emergency alternative rail service. The STB granted this authority to WTL, and authorized the emergency alternative rail service for an initial period of 30 days, which it later extended to the maximum period allowed under 49 U.S.C. 11123(c)(1)³. Seeking a permanent solution to the inadequacy of SAW's rail service, in May 2006, PYCO filed an application with the STB pursuant to 49 U.S.C. 10907(b)(1)(A)(i), under which the STB may force the sale of a rail line to a financially responsible party to remedy inadequate rail service. The STB granted PYCO's application (as revised)⁴.

Pursuant to this STB decision, PYCO has STB authority to own and operate a railroad on the lines. It is PYCO's intent to purchase all SAW's property on or about November 5, 2007, and (as PYCO advised the STB) have WTL actually operate the lines. According to Mr. Montange, PYCO does not operate or retain the capacity to operate the line in question. It does not own or lease any locomotives, nor does it have staff assigned to provide rail service⁵. PYCO intends to contract with the WTL to conduct rail service over the line, and will not retain control over the day to day operations of the line.

Section 1(a) (1) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1)), insofar as relevant here, defines a covered employer as:

¹ SAW is an employer covered under the Acts (B.A. No. 4868).

² WTL is an employer covered under the Acts (B.A. No. 2888).

³ See STB Finance Docket No. 34802, served January 26, February 16, February 24, and June 21, 2006.

⁴ See Finance Docket No. 34890, served August 31, 2007.

⁵ Mr. Montange explains that PYCO has historically owned and operated trackmobiles to move cars spotted at or immediately adjacent to its two Lubbock cottonseed oil mills, and anticipates no change in that historic use. However, Mr. Montange notes that the trackmobiles are "manifestly inadequate to provide general switching service on the lines in question to PYCO, much less other rail customers, in Lubbock".

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this to the facts of PYCO, the Board determines that PYCO is not an employer covered under the Acts. The Board finds that it is not the primary business purpose of PYCO to profit from railroad activities; the evidence of record shows that the main purpose of PYCO is to produce cottonseed oil and cottonseed byproducts for sale to the public. The second and third parts of the Railroad Ventures test are satisfied, inasmuch as PYCO owns no rail equipment and therefore does not have the capacity to operate the line, and the railroad operations are conducted by West Texas & Lubbock Railroad, a rail carrier employer.

Based upon the information summarized above, and consistent with the holdings in B.C.D. 00-47, it is the decision of the Railroad Retirement Board that PYCO Industries is not an employer under the RRA and RUIA.

Original signed by:

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